

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CURTIS J. COTTON,

Defendant.

4:09-CR-3106

ORDER

This matter is before the Court on the motion of defendant's counsel to withdraw ([filing 83](#)) and the defendant's motion to proceed in forma pauperis ([filing 85](#)). Both motions will be denied without prejudice.

To begin with, [8th Cir. R. 27B\(a\)](#) provides that:

Retained counsel in criminal cases, and counsel appointed to represent a party pursuant to the provisions of the Criminal Justice Act, [18 U.S.C. § 3006A](#), [Federal Rule of Criminal Procedure 44](#), or the inherent power of a federal court, shall file a notice of appeal upon their client's request. *Defendant's trial counsel, whether retained or appointed, shall represent the defendant on appeal, unless the Court of Appeals grants permission to withdraw.*

(Emphasis supplied.) Accordingly, counsel's motion to withdraw will be denied without prejudice to refile that motion in the Eighth Circuit pursuant to [8th Cir. R. 27B\(b\)](#).

Second, the defendant's motion for leave to proceed in forma pauperis is not accompanied by the necessary documentation. The defendant was not previously permitted to proceed in forma pauperis, and he had retained counsel, so he cannot proceed on appeal in forma pauperis without further authorization. See [Fed. R. App. P. 24\(a\)\(3\)\(A\)](#). So, to proceed in forma pauperis, the defendant's motion must be supported by an affidavit pursuant to [28 U.S.C. § 1915\(a\)\(1\)](#) and Rule 24(a)(1).

Instead, all the Court has before it is a motion filed through counsel representing *counsel's* belief that the defendant is unable to pay fees and is entitled to relief, and a motion and affidavit of *counsel* that the defendant "has exhausted all litigation resources." [Filing 83](#); [filing 85](#). This falls short of

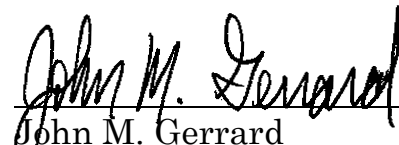
what the rules require, so the defendant's motion will be denied without prejudice to refile with the proper evidentiary support. Specifically, the defendant may complete [Fed. R. App. P. Form 4](#), or present another form of affidavit substantially complying with the requirements of § 1915(a)(1) and Rule 24(a)(1).

IT IS ORDERED:

1. The motion of defendant's counsel to withdraw ([filing 83](#)) is denied without prejudice to its reassertion in the U.S. Court of Appeals for the Eighth Circuit.
2. The defendant's motion for leave to proceed in forma pauperis ([filing 85](#)) is denied without prejudice.

Dated this 29th day of August, 2016.

BY THE COURT:



John M. Gerrard
United States District Judge